



DoD Health Services Region IV

Legal Implications of Augmenting MTF Personnel

29 August 2002



BRIEFING CONTENTS

- **History of Partnering Before TRICARE**
- **MTF Commander Options Under TRICARE**
- **License Portability Limitations**
- **Liability Recap**
- **Use of Volunteers**
- **Avoiding Government Liability**



History

- **CHAMPUS Reform Initiatives (CRI)**
 - **CHAMPUS Prime and Extra (CA & HI)**
 - **Catchment Area Management (CAM)**
 - **Community Outpatient Clinics (PRIMUS & NAVCARE)**
 - **Internal Partnership Agreements**
- **CRI Common Goals**
 - **Access**
 - **Quality**
 - **Control Costs**



MTF COMMANDER OPTIONS UNDER TRICARE

- Resource Sharing Agreement (Non-Personal Contracts)**
- Resource Support Agreements (Non-personal Services Contracts)**
- Other Non-Personal Services Contracts**
- Personal Services Contracts**
- Volunteer Services**



RESOURCE SHARING AGREEMENTS

- **Cost Avoidance Opportunities Drive Use**
- **Mutual Benefit To Contractor & Government**
- **Approved By Lead Agent**
- **“Right of First Refusal” – REA Settlement**
- **RSAs Are Non-Personal Services Contracts**
- **If Contractor Unwilling/Unable To Play –
Consider Resource Support Agreements**



RESOURCE SUPPORT AGREEMENTS

- **Non-Personal Services Contracts**
- **IDIQ Task Order under Managed Care Support Contract**
- **Competition Requirements Satisfied**
- **MTF Funds Each Order**
- **Use by MTF Optional**
- **MTF May Independently Contract Out**



NON-PERSONAL SERVICES CONTRACTS

- **Always available to MTF Commander After Considering Resource Sharing/Support**
- **Contractor Liable for Provider Negligence**
 - **Provider Not Subject to Government Control**
 - **Maintains Own Malpractice Insurance**
 - **Not Covered by Federal Tort Claims Act**
 - **Licensed in State Where Service Provided**



Personal Services Contracts

- **Only Used When Most Cost Effective Option**
 - **Cost Must Be Less Than Or Equal to CHAMPUS Costs (DODI 6025.5)**
 - **Consider Cost of Government Liability!!!**
- **Provider Considered Government Employee**
 - **Performance Controlled by Government Supervisors**
 - **Covered by Federal Tort Claims Act**
 - **License Requirements Same As Government Civilian Employees**



License Portability Issues

- **Problem – DoD Military Health Service Practitioners Operating Outside State Where Licensed**
- **Solution – DoD Directive 6025.13**
 - **DoD Healthcare Practitioners May be Licensed In Any State**
 - **Does Not Include Contract Providers**
 - **Exception – Personal Services Contracts**



License Portability

How Portable Are They?

- **Status of Provider Key to Portability**
 - **Members of the Armed Forces**
 - **Any Location Authorized By Secretary of Defense**
 - **Authority – DOD Directive 6025.16**
 - **DoD Civilian Employees**
 - **Any DoD Facility – DOD Directive 6025.13**



LICENSE PORTABILITY CONT'D

- DoD Personal Services Contract**
 - Any DoD Facility – DODI 6025.5**
- DoD Non-Personal Services Contractor**
 - Only in State Where Licensed**
 - Includes Resource Sharing and Resource Support Providers**
- Volunteers**
 - Red Cross Volunteers – Any DoD Facility DoD Directive 1330.5**
 - Other Volunteers – ??? (10 USC 1588, DoD Instruction 1100.21)**



LIABILITY RECAP

- **Resource Sharing/Support Agreements**
 - **Contractor Liable for Provider Negligence**
 - **Government Liable for External RSAs**
- **Other Non-Personal Services Contracts**
 - **Contractor Liable for Provider Negligence**
- **Personal Services Contracts**
 - **Government Liable for Provider Negligence**
- **Volunteers**
 - **Government Liable for Provider Negligence**



NEW OPTION NON-RED CROSS VOLUNTEERS

- **10 USC 1588 Existed For Years**
 - **DODI 1100.21 Implemented Law on 11 March 2002**
 - **Awaiting Service Implementing Regulations**
- **Volunteers Considered Government Employees Only For Limited Purposes**
- **Claims Arising from Volunteers' Negligence Covered by Military Claims Act**
- **Reasonable Reimbursements Authorized**



DODI 1100.21 Regulatory Requirements

- Volunteers Sign Agreements – Duties Tracked**
- “Must Be Licensed, Privileged, Appropriately Credentialed or Be Otherwise Qualified Under Applicable Law/Regulations”**
- Will Not Perform Duties Unusually Susceptible To Injury To Themselves Or Others**
- Parental Permission Required For Volunteers Under 18**
- Background Check Required When Working With Children**
- Volunteer May Access Privacy Act System of Records**
- May Not Hold Policy Making Positions or Supervise**



Avoiding Government Liability

- **Review Options Under Managed Care Support Contract First**
- **Consider Limitations of Contract Option Used**
- **Verify Existence of Malpractice Insurance**
- **Resist Exercising Supervision and Control of Contract Providers**
- **Avoid Use of Personal Services Contracts**



FREE LEGAL ADVICE

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